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May 5, 2014

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COURTROOM 1920

Honorable Justice Scholfield , U.S.D.J.
United States District Court for Southern
District of New York
500 Pearl Street
New York, New York 10007

RE: **Capital One National Association v. 48-52 Franklin, LLC**
CIVIL ACTION # 12-CV-3366 (BSJ)

Dear Justice Scholfield:

This Office represents the Defendants “**48-52 Franklin LLC and Marshall Weisman**”. A prior Order of this Court dated April 22, 2014 provided that Defendant make any objections to Capital One’s selection of the Referee by **May 6, 2014**. The Court also entered an Order dated **April 11, 2014** that Defendant’s file a letter by April 14, 2014 raising any objections to the proposed Order accompanying Plaintiff’s letter at Docket #77. That letter is dated April 10, 2014 and requests that the collateral subject to the Mortgage to be sold at Public Auction. The letter further documents its attempt to contact Counsel for the Defendants, but acknowledges that I was away for the Passover Holiday.

My prior letter dated August 10, 2013 (Docket #76) also verifies that on April 10, 2014 I was already out of the Country and would not be returning April 29, 2014. It was therefore not possible for me to respond by April 14, 2014 to Plaintiff’s letter dated April 10, 2014 (Docket #77). I therefore respectfully request that this letter serve as a response to both of Plaintiff’s Attorney’s letters.

While I do not have specific objection to Mr. Abramson serving as a Referee, it is Defendant’s position that Plaintiff’s proposal of a Sale of the Units at a Public Auction in one parcel would be not only illegal, but particularly inappropriate in this case and would only assure losses to the Defendants and a likely large deficiency Judgment which would be uncalled for in the circumstances.

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TO: Honorable Justice Scholfield

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As Defendant Marshal Weisman set forth in his Affirmation in Opposition to the Summary Judgment Motion, (Docket #39) the remaining Lots which are parking spaces and a model Unit are restricted under the offering plan and cannot be sold to outsiders. The Unit is restricted to guests of Owners and the parking spots are also restricted to an Owner of Condominium at the Property. Therefore, as a matter of Law the Units cannot be offered to the general public at a Public Auction.

Furthermore, even if a Public Auction would be warranted, it certainly would not bring the highest amount for the Property and, if anything, selling all the Units in one parcel would probably eliminate all of potential Bidders for the Property. According to the Plaintiff's proposal, both the apartment and all the parking spaces must be sold as one parcel. It would be extremely unlikely that any Bidder would be interested in doing so. If anything, there may be individuals interested in purchasing a single parking Unit, or a single apartment. Therefore in all likelihood the Plaintiff would merely take back the apartments with a minimal bid and seek to impose a large deficiency Judgment on the Defendants.

Under both Federal Law and New York Law, the collateral must be sold in a Commercially reasonable manner with the intention of seeking Bidders that would produce the highest value for the collateral apartment. It is respectfully submitted, that selling all of the apartments in one parcel would have the opposite effect.

Therefore we strenuously object to the Court signing the Judgment with the above provisions for a Public Auction of the Units in one parcel. Clearly, the circumstances require a considered plan using professionals that are able to market these Units individually, as well as a ruling from the Court as to the qualification of the Bidders. A signing of the proposed final Judgment of Foreclosure and Sale in its present form would greatly prejudice the Defendants. We respectfully request that the Court refrain from doing so and from appointing any Referee for a Public Auction until a ruling is made as to the most commercially reasonable plan for selling the various Units.



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